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5 BEFORE THE
6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

7)
8 In the Matter of:) DOCKET NO. CWA-10-2005-0170
9)
10 CITY OF GOODING WASTEWATER) **CONSENT AGREEMENT AND**
11 TREATMENT FACILITY,) **FINAL ORDER**
12 Gooding, Idaho,)
Respondent.)

13
14 **I. STATUTORY AUTHORITY**

15 1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority
16 vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by
17 Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

18 1.2. The Administrator has delegated the authority to enter into the Final Order
19 contained in Part V of this CAFO to the Regional Administrator of EPA, Region 10.

20 1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1)
21 and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the
22 Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and the
23 City of Gooding (“Gooding”) hereby agrees to issuance of, the Final Order contained in Part V
24 of this CAFO.
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2.2. Part III of this CAFO contains a concise statement of the factual basis for the alleged violations of the CWA, together with specific provisions of the CWA and implementing regulations that Gooding is alleged to have violated.

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutants by any person” except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section 504(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.3. Gooding owns and operates a wastewater treatment facility (“Facility”) located at 1775 S. 1800 E. in Gooding, Idaho.

3.5. The Facility, which was under Gooding's control at all times relevant to this action, discharged pollutants from Outfall 001. Outfall 001 is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1562(14).

1 3.6. The Facility discharges municipal wastewater containing pollutants into Little
2 Wood River. Little Wood River is a “navigable water” within the meaning of CWA Section
3 502(7), 33 U.S.C. § 1562(7), and a “water of the United States” within the meaning of 40 C.F.R.
4 § 122.2.

5 3.7. Part I.A. of the Permit establishes effluent limitations for the discharge to Little
6 Wood River from Outfall 001. These effluent limitations include, but are not limited to, limits
7 for total residual chlorine, total ammonia, fecal coliform, and biological oxygen demand
8 (“BOD”).

9 3.8. Part II.C. of the Permit requires Gooding to summarize monitoring results for the
10 Facility each month in a Discharge Monitoring Report (“DMR”).

11 3.9. Gooding’s DMRs from December 2002 to October 2004 indicate that the Facility
12 had 521 violations of the effluent limitations set forth in the Permit. When a permittee exceeds a
13 monthly average effluent limit, the permittee is deemed to be in violation of that effluent limit
14 each of the days of the month in which the violation occurred. When a permittee exceeds a
15 weekly average effluent limit, the exceedance is counted as seven violations. When a permittee
16 exceeds a daily maximum limit, the exceedance is counted as one violation. Attachment A to
17 this CAFO provides a table of the violations including the month of the violation, type of
18 pollutant, effluent limitation, and actual amount of pollutant reported in the DMR.

19 3.10. Between December 2002 and October 2004, Gooding violated the total residual
20 chlorine effluent limit in the Permit on one occasion, totaling one violation.

21 3.11. Between December 2002 and October 2004, Gooding violated the BOD effluent
22 limit in the Permit on six occasions, totaling 111 violations.

23 3.12. Between December 2002 and October 2004, Gooding violated the fecal coliform
24 effluent limit in the Permit on two occasions, totaling 37 violations.

1 3.13. Between December 2002 and October 2004, Gooding violated the ammonia
2 effluent limit in the Permit on 24 occasions, totaling 372 violations.

3 3.14. Under CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an
4 administrative penalty when EPA finds that “any person ... has violated any permit condition or
5 limitation ... in a permit issued” pursuant to CWA Section 402, 33 U.S.C. § 1342. The Permit
6 violations alleged for the Facility constitute violations of CWA Section 301(a), 33 U.S.C. §
7 1311(a). Consequently, under CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), Gooding
8 is liable for the administrative assessment of civil penalties for violations at the Facility in an
9 amount not to exceed \$11,000 per day for each day during which the violation continues, up to a
10 maximum amount of \$157,500.

11 **IV. CONSENT AGREEMENT**

12 4.1. Gooding stipulates that EPA has jurisdiction over the subject matter alleged
13 herein.

14 4.2. As required under CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has
15 taken into account the nature, circumstances, extent, and gravity of the alleged violations as well
16 as Gooding’s economic benefit of noncompliance, ability to pay, and other relevant factors.
17 After considering all of these factors, EPA has determined and Gooding agrees that an
18 appropriate penalty to settle this action is in the amount of Seven Thousand Five Hundred
19 Dollars (\$7,500.00).

20 4.3. Gooding consents to the issuance of the Final Order set forth in Part V, below,
21 and agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days
22 of the effective date of this Final Order.

1 4.4. Payment under this CAFO shall be made by cashier's check or certified check,
2 payable to the order of "Treasurer, United States of America" and delivered to the following
3 address:

4 Mellon Bank
5 EPA Region 10
6 P.O. Box 36903M
7 Pittsburgh, Pennsylvania 15251

8 Gooding shall note on the check the title and docket number of this action.

9 4.5. Gooding shall serve photocopies of the check described in Paragraph 4.4, above,
10 on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement
11 at the following addresses:

12 Regional Hearing Clerk
13 U.S. Environmental Protection Agency
14 Region 10
15 1200 Sixth Avenue, ORC-158
16 Seattle, WA 98101

17 Office of Compliance and Enforcement
18 Attn: Jim Corpuz
19 U.S. Environmental Protection Agency
20 Region 10
21 1200 Sixth Avenue, OCE-133
22 Seattle, WA 98101

23 4.6. If Gooding fails to pay the penalty assessed by this CAFO in full by the due date
24 set forth in Paragraph 4.3, above, Gooding may be subject to a civil action to collect the assessed
25 penalty under the CWA, together with interest, fees, costs, and additional penalties described
below. In any collection action, the validity, amount, and appropriateness of the penalty shall
not be subject to review.

1 4.7. If Gooding fails to pay any portion of the penalty assessed by this CAFO in full
2 by the due date set forth in Paragraph 4.3, above, Gooding shall be responsible for payment of
3 the amounts described below:

4 4.7.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. 1319(g)(9), any
5 unpaid portion of the assessed penalty shall bear interest at a rate established by the
6 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
7 Final Order set forth in Part V, below, provided, however, that no interest shall be
8 payable on any portion of the assessed penalty that is paid within thirty (30) days of the
9 effective date of the Final Order.

10 4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA
11 Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Gooding fails to pay on a timely basis the
12 amount of the penalty set forth in Paragraph 4.2, above, Gooding shall pay (in addition to
13 any assessed penalty and interest) attorneys fees and costs for collection proceedings and
14 a quarterly nonpayment penalty for each quarter during which such failure to pay persists.
15 Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the
16 aggregate amount of Gooding's penalties and nonpayment penalties which are unpaid as
17 of the beginning of such quarter.

18 4.8. The penalty described in Paragraph 4.2, above, including any additional costs
19 incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA
20 and shall not be deductible for purposes of federal taxes.

21 4.9. The undersigned representative of Gooding certifies that he or she is fully
22 authorized to enter into the terms and conditions of this CAFO and to bind Gooding to this
23 document.
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4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.11. Gooding expressly waives any rights to contest the allegations and to appeal the Final Order set forth in Part V, below.

4.12. The provisions of this CAFO shall bind Gooding and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Gooding and EPA.

DATED:

CITY OF GOODING:

HERBERT STROUD
Mayor
For Respondent

DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

COURTNEY J. HAMAMOTO
Assistant Regional Counsel
For Complainant

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Gooding is hereby ordered to comply with the foregoing terms of the settlement.

1 5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
2 pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R.
3 § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue
4 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
5 This CAFO does not waive, extinguish, or otherwise affect Gooding's obligations to comply
6 with all applicable provisions of the CWA, the CWA regulations, and/or any permits issued
7 thereunder.

8 5.3. In accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40
9 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given an
10 opportunity to consult with EPA regarding the assessment of the administrative civil penalty
11 against Gooding.

12 5.4. Pursuant to CWA Section 309(g)(4)(A), 33 U.S.C. § 1319(g)(4)(A), EPA has
13 published public notice of its intent to assess an administrative penalty against Gooding and to
14 invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have
15 elapsed since the issuance of this public notice, and EPA has received no petitions to set aside
16 the Consent Agreement contained herein.

17 5.5. This Final Order shall become effective upon filing.

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19 SO ORDERED this ____ day of _____, 2005.
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22 _____
23 RONALD A. KREIZENBECK
24 Acting Regional Administrator
25 U.S. Environmental Protection Agency
Region 10

ATTACHMENT A—PERMIT VIOLATIONS

Month	Pollutant	Effluent Limitation	Value Reported in DMR	Limit Type
Dec. 2002	chlorine	0.2 lb/day	0.3 lb/day	daily maximum
Jan. 2003	ammonia	0.5 mg/l	0.85 mg/l	average monthly
Jan. 2003	ammonia	1.3 mg/l	3.08 mg/l	daily maximum
Feb. 2003	ammonia	10.8 lb/day	46.97 lb/day	daily maximum
Feb. 2003	ammonia	0.5 mg/l	0.62 mg/l	average monthly
Feb. 2003	ammonia	1.3 mg/l	35.3 mg/l	daily maximum
June 2003	ammonia	0.5 mg/l	1.54 mg/l	average monthly
June 2003	ammonia	1.3 mg/l	4.31 mg/l	daily maximum
Sept. 2003	BOD	45 mg/l	53 mg/l	average weekly
Sept. 2003	ammonia	4.2 lb/day	8 lb/day	average monthly
Sept. 2003	ammonia	10.8 lb/ay	15.8 lb/day	daily maximum
Sept. 2003	ammonia	0.5 mg/l	7.32 mg/l	average monthly
Sept. 2003	ammonia	1.3 mg/l	14.6 mg/l	daily maximum
Sept. 2003	BOD	85%	76%	average monthly
Oct. 2003	ammonia	0.5 mg/l	0.59 mg/l	average monthly
Oct. 2003	ammonia	1.3 mg/l	1.63 mg/l	daily maximum
Feb. 2004	ammonia	0.5 mg/l	2.7 mg/l	average monthly
Feb. 2004	ammonia	1.3 mg/l	10.3 mg/l	daily maximum
May 2004	ammonia	0.5 mg/l	1.18 mg/l	average monthly
May 2004	ammonia	1.3 mg/l	6.05 mg/l	daily maximum
May 2004	fecal coliform	50/100 ml	87/100 ml	average monthly
May 2004	fecal coliform	100/100 ml	170/100 ml	average weekly
June 2004	ammonia	0.5 mg/l	1.18 mg/l	average monthly
June 2004	ammonia	1.3 mg/l	6.05 mg/l	daily maximum
July 2004	ammonia	0.5 mg/l	0.67 mg/l	average monthly
July 2004	ammonia	1.3 mg/l	2.14 mg/l	daily maximum
Aug. 2004	BOD	85%	82%	average monthly
Aug. 2004	BOD	45 mg/l	46 mg/l	average weekly
Aug. 2004	ammonia	0.5 mg/l	0.93 mg/l	average monthly
Sept. 2004	BOD	45 mg/l	51 mg/l	average weekly
Sept. 2004	BOD	85%	76%	average monthly
Oct. 2004	ammonia	0.5 mg/l	1.22 mg/l	average monthly
Oct. 2004	ammonia	1.3 mg/l	4.74 mg/l	daily maximum

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order" was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, WA 98101

A true and correct copy, by certified mail, return receipt requested:

Herbert Stroud, Mayor
City of Gooding
308 5th Avenue West
Gooding, ID 83330-1205

Dated: _____

U.S. EPA Region 10

Name	C. Hamamoto	J. Corpuz	M. Silver	K. Ogle	M. Bussell
Date					
Initials					